

STATE OF MICHIGAN
COURT OF APPEALS

GARY L KING, MARLA K. KING, ROBERT W.
KING and MONICA M. KING,

UNPUBLISHED
August 9, 2005

Plaintiffs-Appellants,

v

ALAN F. BUTCHBAKER, CASS COUNTY
DRAIN COMMISSIONER,

No. 254912
Cass Circuit Court
LC No. 03-000799-AS

Defendant-Appellant.

Before: Murphy, P.J., and Sawyer and Donofrio, JJ.

PER CURIAM.

Plaintiffs appeal as of right the circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). This case arises out of a special assessment for the cost of constructing a drain located in the area of Hilltop Road in Cass County (Hilltop Road Drain). The drain project was proposed because water running down from higher elevations, i.e., various parcels owned by plaintiffs, had occasionally caused a roadway to be washed out and had caused the saturation of lower-elevated parcels. The drain would divert rainwater to a nearby lake in such a manner as to alleviate the past drainage problems. Defendant's apportionment of the costs involved in undertaking and completing the project, which costs totaled approximately \$84,000, resulted in plaintiffs' property being assessed a little over \$17,000, with the remainder of the costs being allocated to the township, the county, and other residents of the township. Plaintiffs' position was and is that, under the principle of benefits derived relative to assessing or apportioning the cost of a drain project, their property would receive no benefit from the construction as necessarily and solely reflected by changes in the market value of the property and that the method used by defendant improperly focused on property features that contributed to the need for a drain, not the benefits derived or received by way of the drain project. Therefore, the assessment was unlawful. Plaintiffs also assert that they were entitled to an evidentiary hearing at the circuit court level on the issue of apportionment of costs and benefits pursuant to their complaint for superintending control and applicable law, making summary dismissal improper. A three-member board of review

appointed by the probate court upheld the assessment issued by defendant drain commissioner, and the circuit court upheld the ruling of the board of review. We affirm.

MCL 280.151 and MCL 280.152 clearly and unambiguously indicate that a drain assessment must be based on an apportionment of benefits and that the apportionment of benefits is based on the principle of benefits derived. The concept underlying special assessments to cover the cost of a public improvement, such as a drain, is that the land upon which an assessment is imposed is peculiarly benefited, and thus the property owner does not pay anything in excess of what the owner receives by reason of such improvement. *Blades v Genesee Co Drain Dist No 2*, 375 Mich 683, 695; 135 NW2d 420 (1965). We have no quarrel with plaintiffs' argument that the principle of benefits derived must guide a drain commissioner's apportionment and assessment determinations.

We find it unnecessary to address plaintiffs' argument that benefits derived must be measured by fluctuation, if any, in the market value of the property that is created when taking into consideration the drain project. MCL 280.157 provided the board of review the authority "to hear the proofs and allegations of the parties[,] yet plaintiffs did not take advantage of the opportunity to submit evidence regarding market value. Additionally, when the action was presented to the circuit court under MCL 280.161 (certiorari – now superintending control), plaintiffs failed to present documentary evidence regarding market values or benefits derived in the face of a motion for summary disposition brought pursuant to MCR 2.116(C)(10). See MCR 2.116(G)(4)(adverse party to (C)(10) motion may not rest upon allegations in the pleadings but must present documentary evidence establishing a genuine issue of material fact). Plaintiffs contend that such evidence was unnecessary because relevant evidence was to be submitted via a mandatory evidentiary hearing under MCL 280.161, which provides in pertinent part that, "[i]f issues of fact are raised by the petition for such writ and the return thereto, such issues shall, on application of either party, be framed and testimony thereon taken under the direction of the court." Plaintiffs argue that the complaint for superintending control raised issues of fact and thereby gave rise to their right for an evidentiary hearing under MCL 280.161.

Assuming that the circuit court had the authority to address plaintiffs' specific arguments on appeal from the board of review and that the above-quoted language from MCL 280.161 eradicated the general principles governing summary disposition, a review of the complaint reflects that issues of fact were not sufficiently raised. The complaint, while asserting that there must be an increase in market value to support a finding that property will receive a benefit consistent with the assessment, does not reference or speak of any market appraisal that was actually undertaken and which could have created a factual dispute had an appraisal been inconsistent with defendant's assessment as derived from his mathematical formula. Outside the context of market values, the complaint does not set forth reasons with respect to why plaintiffs' property received no benefit.

To effectively challenge a special assessment, a plaintiff must present credible evidence to rebut the presumption that the assessment is valid and reasonably proportionate to the benefits received. *Kadzban v City of Grandville*, 442 Mich 495, 505, 508; 502 NW2d 299 (1993)(Griffin,

J.)(Boyle, J.). The decisions of officers regarding special assessments are presumed to be valid and should generally be upheld. *Ahearn v Bloomfield Charter Twp*, 235 Mich App 486, 493-494; 597 NW2d 858 (1999). Because plaintiffs failed to overcome the presumption of validity and proportionality at the board of review level and in the circuit court for the reasons stated herein, especially considering plaintiffs' "market value" approach, we conclude that there is no basis for reversal.

Affirmed.

/s/ William B. Murphy

/s/ David H. Sawyer

/s/ Pat M. Donofrio